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# In the Supreme Court of the United States

OCTOBER TERM, 1956.

No. 72.

JOHN M. LEHMANN,  
District Director,  
*Petitioner*,

vs.

UNITED STATES OF AMERICA, *ex rel.* BRUNO CARSON  
or BRUNO CARASANITI,  
*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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## PETITION FOR REHEARING.

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In the lower court in this case, the respondent contended that his deportation violated the ex post facto provisions of the Constitution. The Appellate Court held that ex post facto does not apply and cited *Galvan v. Press*, *Marcelló* and *Harisiades* cases. In this Court Justices Black and Douglas agreed with this contention.

In the light of the re-argument granted in No. 34, *Rowolt v. Perfetto*, which involves this issue, it is respectfully urged that rehearing be granted herein to consider the same.

Respectfully submitted,

HENRY C. LAVINE,

Attorney for Respondent.

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## PETITION FOR REHEARING.

Now comes the undersigned attorney for the respondent herein and presents this, his petition for a rehearing of the above-entitled cause, and in support thereof respectfully states:

That by an opinion handed down on the 3rd day of June, 1957, this Court reversed the decision of the United States Court of Appeals for the Sixth Circuit, which in turn held that this respondent, the appellant in the lower Court, was not deportable because he came under the benefit of the Savings Clause, Section 405(a) of the Immigration and Nationality Act of 1952, and that Section 241(d) of the said Immigration and Nationality Act was not applicable in the case of this respondent because the exceptions spoken of in that section were not specific so

as to exempt the respondent from the benefits of the Savings Clause.

In reversing the Sixth Circuit, this Court held that Carson does not come within the provisions of the Savings Clause and that Section 241(d) "otherwise specifically provides" for the deportation of aliens and that the Savings Clause also provides "if it is otherwise specifically provided."

"(d) Except as otherwise specifically provided in this section, the provisions of this section shall be applicable to all aliens **belonging** to any of the classes enumerated in subsection (a), notwithstanding (1) that any such alien entered the United States prior to the date of enactment of this Act, or (2) that the facts, by reason of which any such alien **belongs** to any of the classes enumerated in subsection (a), occurred prior to the date of enactment of this Act."

An analysis shows three provisions for deportation in that section:

1. Any alien who committed offenses enumerated in subsection (a) of 241 is deportable. (Carson would come under (a) (1) and (4).)

2. The fact that the alien entered the United States prior to the date of enactment of this Act or that the acts the alien committed which made him deportable "occurred prior to the date of enactment," does not help the alien, because Congress can legislate retroactively in deportation cases. (Carson would come under that heading.)

3. The third requisite is that this alien *must* be (on the date of the enactment of this law, June, 1952, or on the effective date of this law, December 24th, 1952), "**belonging to any of the classes enumerated in subsection (a)** notwithstanding that any such alien entered the United States prior to the date of enactment of this Act."

or "that the facts, by reason of which any such alien belongs to any of the classes enumerated in subsection (a), occurred prior to the date of enactment of this Act." (Emphasis supplied.)

Congress thus provides that all aliens who (still) BELONG to the excludable classes on the day of enactment of this new law, shall be deportable regardless of the fact that they entered the U. S. many years before the enactment of the law or that the acts for which they are made deportable have been committed many years before.

To express its intent Congress in 241(d) uses the words "BELONGING" and "BELONGS" but not "BELONGED." Carson, on the day of the enactment of the new law, DID NOT belong to any deportable class and was NOT DEPORTABLE when the new law came into effect.

Here it should be noted, and we believe this is most important, that Congress in writing Section 241(d) uses the present tense in designating aliens who "belong to any of the classes enumerated in subsection (a)." Here it must also be noted that Carson does not presently and did not belong to any of the classes enumerated in subsection (a) on the day of enactment of the new law. True, he did belong when he entered, but he did not belong in the deportable class after July 1st, 1924, and he did not belong to the other deportable class because he obtained a pardon which was acceptable at that time.

So, when this law was enacted in June and became effective in December of 1952, Congress used the present tense in stating that the facts, by reason of which any such alien belongs to any of the classes enumerated in subsection (a), cannot apply to respondent Carson because he did not belong to any of the classes enumerated inasmuch as his status had changed many years before the

enactment of this new law and if Congress had intended to reach him, it would have stated by reason of which any such alien **belonged** to any of the classes enumerated in subsection (a).

We do not see any other interpretation that can be given to that portion of Section 241(d) than the one we are now explaining because Congress must have intended to protect aliens who may have belonged to that class at one time but did not belong to that class at the time of the enactment or the effective date of this new Act, and in that way intended to protect the rights of an alien who has removed himself from the excludable classes enumerated in the section at the time of the formation or the effective date of this new law. Not being in the classes of excludable aliens, Section 241(d) could not, and in our opinion, does not apply to aliens like Carson.

This to our mind is of the utmost importance in this case because it seems to the undersigned that the opinion of the Supreme Court is based mainly on Section 241(d) because the Court in the last paragraph of the opinion says:

"And Section 241(d) makes Section 241(a)(1) and 241(a)(4) applicable to all aliens covered thereby 'notwithstanding (1) that any such alien entered the United States prior to the date of enactment of this Act, or (2) that the facts, by reason of which any such alien **belongs** to any of the classes enumerated in subsection (a) occurred prior to the date of enactment of this Act.' " (Emphasis added.)

It seems that one of the requisites to come under Section 241(d) must be a present belonging to any of the classes enumerated in subsection (a) and of course if such be the case the alien could not be helped in any way even if it "occurred prior to the date of enactment of this Act."

But the main thing is, he must now belong (at the enactment of the new law) to the enumerated classes.

Therefore it is safe to say that if any alien came in as a stowaway prior to July 1, 1924 and remained here more than five years and nothing was done by the Government, that the law then construed that he no longer was deportable as a stowaway and could not be prosecuted as a stowaway, and therefore, when the new law was being enacted and it took effect on December 24th, 1952, that man was not a deportable alien because he did not belong for many years before to the enumerated classes of aliens mentioned in Sect. 241(a). And when Section 241(d) was enacted and uses the present tense "belongs" which means at the time the new law was enacted to the enumerated classes of excludable aliens, it could not affect this Respondent.

In the same way, Section 241(a) (4) specifically provides for the deportation of an alien who at any time within entry has been convicted for two crimes involving moral turpitude, he would belong to an excludable class enumerated in that statute. However, respondent Carson took steps to remove himself from that class of excludable aliens by obtaining a pardon from the Governor of Ohio and under the law in existence at that time by so doing he no longer belonged to the excludable class of aliens. That being the case, again we say that when this new law was passed and took effect respondent Carson was no longer a member of or belonged to the deportable class of aliens provided in that statute and was therefore not under Section 241(d) which uses the present tense, " \* \* \* any such alien belongs to any of the classes enumerated \* \* \*," and therefore was not a person who came under the provision of said Section 241(d) and was not deportable.

We therefore contend that Section 241(d) was drawn to reach those aliens who "belong" who still "belong" to the class of aliens enumerated in Section 241(a)(1) and 241(a)(4) at the passage of this Act but did not intend to reach aliens who *used to belong* at one time or other to that class but removed themselves from such class of aliens or were removed by operation of law.

It must be remembered that Congress repealed the previous deportation laws but *did not repeal the rights granted those aliens who changed their status under prior laws* and did not make illegal all the discretionary relief that had been granted to thousands of aliens under the old laws. The thousands of aliens who obtained such discretionary relief before the passage of the new law and who *now not deportable* are still not deportable because *they did not belong to the enumerated classes named in Section 241(a) to 241(d) inclusive at the time of the enactment of this new law, the Nationality Act of 1952.*

To give an illustration, if Carson had come into the United States as a stowaway on July 2nd, 1924, then he would still belong to the excludable classes enumerated in Section 241(a) without hope of remedying it because the law for which the statute of limitations applied was only in effect for aliens who entered the United States prior to July 1st, 1924. Therefore, whoever entered after July 1st, 1924, was an alien who was *belonging to any of the classes enumerated in subsection (a) on the day of the enactment of this new Nationality Act of 1952, and Section 241(d) expressly provides for his deportation and as the Supreme Court said: "The statute otherwise specifically provides for the deportation of an alien and takes this alien out of the protection of the savings clause."*

Another example, if Carson had not obtained a conditional pardon under the old law prior to the date of

enactment of this new law, then Carson on the date when 241(d) was enacted would be an alien **belonging** to one of the classes enumerated in subsection 241(a)(4) because on that day he would be **belonging** to such a class and he would be "by reason of which any such alien **belongs** to any of the classes enumerated in subsection (a). \* \* \*"

So we say that Congress really intended to protect the aliens who had legally obtained discretionary relief and a change of status of their illegal entries and illegally remaining in the United States by placing this qualification that all those aliens who did not obtain a status of non-deportability by the time of the enactment of this law, then such aliens actually are **belonging** to any of the classes enumerated in subsection (a) and were deportable under Section 241(d) because they were **still members** of that forbidden class and the fact that the acts for which they are now being deported were committed years before the enactment of this new law did not help them in the least.

So we have here a situation where Congress legislated retroactively against aliens who were being deported for past criminal offenses and the Supreme Court before this opinion and in this opinion upholds the right of Congress to do so. But Congress made a condition before such aliens can be deported for past misconduct and that condition is that they must **still be** and must **still belong** at the time of the enactment of this Act to the enumerated classes under subsection (a) and only those aliens are deportable who still are members of such classes of excludable aliens. And at the same time Congress, by using the present tense of the word "belong" and "belonging" to such enumerated classes in subsection (a), protects those aliens who may at one time have belonged to those classes but who no longer did or who no longer were members of such classes on the date of the enactment of this new law.

because of the relief that they had obtained under the old laws and the legal remedies which they followed to obtain this particular status were protected by Congress in Section 241(d) by the use of the present tense of the word "belong."

Had Congress used the past tense and said instead that all aliens who at any time **belonged** to any of the classes, it would have included Carson and every alien who was ever in the enumerated classes who entered the United States illegally or remained in the United States illegally after commission of offenses and there would be no hope for any of them.

Therefore, by use of the present tense in the provision by Congress that this law shall only apply to aliens who at that time **belong** to any of the classes enumerated in subsection (a), eliminates Carson and aliens in his class who were no longer members of such classes enumerated in subsection (a) at the time of enactment.

As long as this Court held that Section 241(d) is the applicable section and thereby reversed the Appellate Court, then we must recognize that this particular section holds two things: One, that the fact that the grounds for the deportation "occurring prior to the date of the enactment of this Act is of no help to the alien and he is nevertheless deportable"; and secondly, the other provision is that at the time of the enactment of this Act the alien must **belong** to any of the classes enumerated in subsection (a) and before a deportation can be had for a past misconduct both of the requisites of Section 241(d) must be present.

Only in that way can the rights of aliens who legally obtained relief that was provided for them by law; only in that way can aliens be protected from deportations at the present day who were not deportable because of the pro-

vision under the old laws which granted them the relief that they had; only in that way Congress took the steps to protect the thousands upon thousands of aliens and their families who have taken steps and obtained the benefits provided under the law at that time and by doing so had removed themselves as being members of the excludable classes enumerated in Section 241(a) and were no longer belonging to those classes on that day.

It appears to the writer that a rehearing should be granted by this Court in the case of Carson. After all is said and done, did Congress really intend to deprive aliens of the rights they obtained under prior legislation? While this decision of this Court practically ends the debate as to whether Section 241(d) is specific and removes the alien from the benefits of the savings clause in the same Act, it actually does not settle the real question, Was it the intent of Congress to deprive these aliens of benefits gained under prior legislation? It is highly questionable whether Congress had that in mind when it wrote the terms of Section 241(d) because if Congress did have that in mind it is very strange that it did not say something about it but left it to conjecture. It has been contended at all times in this case that the Savings Clause, Section 405(a) must be read in conjunction with Section 241(d) in order to have an all-around understanding of what Congress really omitted. In view of this decision the many thousands of persons who obtained a change of status from illegal residence to legal residence, by registering, by suspensions, in fact all excludable aliens who were eligible and did apply for permanent residence under former section 728-(b) and *who are still eligible to apply at the present date for such status under Section 1259 of the Act of 1952*, and excludable aliens who have been granted discretionary relief and thousands of conditional pardons in deportation

proceedings under Section 115, Title 8 U. S. C. are now all deportable.

This opinion, if permitted to stand, makes all aliens deportable who were excludable under any law at the time of their entry, regardless of their having attained a non-deportable status in any of the forms and manners that had previously been provided.

As of this date the decision of this Court in this case is so far-reaching that no alien can now adjust his illegal status to a legal status without being in danger of being deported by the Department for no other reason than illegal entry of many years back. For example, an alien illegally entered the United States, let us say, in 1930. After a lapse of say 10 or 15 years he applies for registry, which is a form of relief, and having been a person of good moral character he obtains registry and up until now that man was not deportable on the ground of illegal entry, or any other ground. Perhaps he is married to a native-born citizen of the United States and has three or four children born here, and in his own mind he is quite safe from the Deportation Department of the Immigration Service. He is established in business and has a growing family, perhaps even grandchildren, just like Carson. As we stated above, he believes himself safe from deportation and was considered safe from deportation by all around, including the authorities, but now, in view of this decision, he is no longer safe from deportation. He can be arrested, tried and ordered deported because he is an alien who was a member of an excludable class at the time of his entry into the United States in 1930. And inasmuch as this Court held that there is a specific exception in Section 241(d) and that at the time of his entry he was an alien excludable by law, he therefore is not entitled to the benefits of the Savings Clause and although he has never committed a crime

in his life he is nevertheless deportable and can be banished at any time that the Deportation Department desires to deport him.

Dozens, even hundreds, of examples of similar nature can be given to this Court which will prove that this opinion has made deportable every alien who has entered the United States illegally and even for that reason alone, and that his changing of his status in accordance with Section 728(b) of the former Nationality Act does not help him.

A reading of the opinion compels the realization that this opinion makes deportable every alien even though he never committed a crime in his life, if such alien entered the United States illegally at any time, and even though such alien adjusted his status under the law and was considered as a legal resident for many years heretofore, such alien nevertheless has no standing and can be deported at any time the Department chooses to do so, regardless of his family ties and regardless of the roots that he planted in this country. In this connection it is most interesting to read from the opinion of Judge Charles J. McNamée which was given in the deportation case involving Dominic Sciria and which is reported at 136 F. Supp. 458. This case is now pending in the United States Court of Appeals for the Sixth Circuit awaiting the final decision of the United States Supreme Court in this Carson case. This is the same District Judge who decided the Carson case and later reversed decision on the question of stowaway in Carson. This reversal of opinion is in the case of Sciria from which we quote as follows (This part was not published but was submitted to the Sixth Circuit and is mentioned in their opinion.) The District Judge said as follows:

"I am aware that the decision reached in the above entitled case is in conflict with the ruling of this court in U. S. ex rel. Bruno Carasaniti v. Kershner, Civil Action No. 30800 in this court (now pending in the Court of Appeals) insofar as Carasaniti's deportation was sustained on the ground that he entered this country as a stowaway in 1918. As indicated above, I am of the opinion that in sustaining Carasaniti's deportation on that ground I was in error. However, it should be noted that in his presentation of the case before me, Carisaniti did not rely upon or even refer to the savings clause of the 1952 Act. His sole defense was that the 1952 Act was an *ex post facto* law that operated retroactively to deprive him of vested rights. There was, of course, no merit to this claim. There is another ground upon which the deportation of Carasaniti was sustained. That ground is not involved in this case and I make no comment on the ruling made in connection therewith in Carasaniti."

We quote from Judge McNamee's opinion:

"While Sections 1251(a) (1) and 1251(d) expressly provide for the deportation of any alien who was excludable by the law in effect at the time of entry, even though such entry occurred before June 27, 1952, these sections do not specifically provide for the deportation of aliens who were excludable under the law in effect at the time of entry but who acquired a status of non-deportability thereafter under prior law. Nor is there any specific provision for the deportation of aliens who illegally entered this country as members of an excluded class prior to July 1, 1924. If Section 1251(a) (1) be given the effect claimed for it by the Government, then 'any alien' within the classes designated by that section would include—  
(a) excluded aliens who were eligible to apply for permanent residence under former Section 728(b) and who are still eligible to apply for such status under Section 1259 of the Act of 1952, and (b) excludable aliens who have been granted discretionary

relief in deportation proceedings under former Section 155 Title 8 U. S. C. The construction for which the Government contends would also produce an anomaly in the case of aliens who had been admitted to permanent residence in the United States under former Section 728(b). While such aliens would be deemed to have been lawfully admitted into this country as of the time of their entry, they would nevertheless be aliens who, within the terms of Section 1251(a) (1) were excludable at the time of entry by the law then in effect. It is unreasonable to suppose that Congress would reverse its long-standing policy towards excludable aliens who entered this country prior to July 1, 1924 otherwise than by a plain and specific declaration of its purpose to do so. Section 1251(a) (1) cannot be construed as expressing such intention. That section is applicable generally to all aliens within the classes therein defined. But it *contains no specific provision at variance with the express terms of the savings clause.* The savings clause provides that any statute or part of statute repealed by the 1952 Act shall continue in force and effect as to any 'status' or 'condition' existing at the time the 1952 Act became effective, except as otherwise specifically provided therein. As I read Section 1251(a) (1) it does not specifically provide that the status of non-deportability acquired by aliens who entered the United States prior to 1924 shall be terminated. In the absence of such a specific provision in the 1952 Act, the savings clause is applicable and preserves to the petitioner his status of non-deportability." (Emphasis supplied.)

It is not believed that Congress had in mind the wholesale deportations of all aliens, whether they adjusted their status or not. But it cannot be denied that the opinion leaves no other alternative.

**The important question is, if Congress did intend to cause the deportation of all aliens, without exception, who**

~~entered illegally or who became deportable after entry for other reasons, why did it insert Section 1259 of Title 8 U. S. C. in the new Act, which reads as follows:~~

"1259. Record of admission for permanent residence in the case of certain aliens who entered the United States prior to July 1, 1924.—(a) A record of lawful admission for permanent residence may, in the discretion of the Attorney General and under such regulations as he may prescribe, be made in the case of any alien, if no such record is otherwise available and such alien shall satisfy the Attorney General that he—

- (1) entered the United States prior to July 1, 1924;
- (2) has had his residence in the United States continuously since such entry;
- (3) is a person of good moral character;
- (4) is not subject to deportation; and
- (5) is not ineligible to citizenship.

(b) An alien in respect of whom a record of admission has been made as authorized by subsection (a), shall be deemed to have been lawfully admitted to the United States for permanent residence as of the date of his entry prior to July 1, 1924. (June 27, 1952, c. 477, Title II, subchap. 5, Sec. 249, 66 Stat. 219.)

It should be remembered that this section 1259 of the Nationality Act of 1952 is a reenactment in that Act of the old section 728(b) of the former Nationality Act which was repealed by the Act of 1952 and while there are just a few slight changes in phraseology and arrangement of the text in the new section in scope and effect it is identical with former section 728(b).

To quote Judge McNamee in the *Sciria* case, "It would seem therefore, that Congress has adhered consistently to a policy of permitting aliens who unlawfully entered the

United States prior to July 1st, 1924, to apply for a status of permanent residence in this country."

The Government contended in its argument and brief that the petitioner was divested of his status of non-deportability under prior law by the repeal of the 1917 Act and by the provisions of Section 1251(a)(1) and 1251(d) of the Act of 1952. This contention was made by the Government in the District Court, in the Appellate Court and in the Supreme Court in the *Carson* case, as well as in the *Sciria* case, and Judge McNamee answered that contention that was made before him in the *Sciria* case as follows:

"(1) It is no longer open to question that Congress in the exercise of its plenary power over aliens may enact legislation retroactive in its effect and provide for the expulsion of aliens on grounds that were non-existent at the time of their entry and remove existing bars to deportation. *Carlson v. Landon*, 342 U. S. 524, 72 S. Ct. 525, 96 L. Ed. 547; *Harrisades v. Shaughnessy*, 342 U. S. 580, 72 S. Ct. 512, 96 L. Ed. 586; *United States ex rel. Eichenlaub v. Shaughnessy*, 338 U. S. 521, 70 S. Ct. 329, 94 L. Ed. 307; *Mahler v. Eby*, 264 U. S. 32, 44 S. Ct. 283, 68 L. Ed. 549; *Marcello v. Ahrens*, 5 Cir., 212 F. 2d 830.

"(2) The only question that arises in this connection is whether by the terms of the pertinent provisions of the 1952 Act, Congress expressed its intention to deport aliens who had acquired a status of non-deportability under prior law.

"Section 1251(a)(1) of the Act of 1952 provides:

"(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

"(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry; \* \* \*

"Section 1251(d) provides in part as follows:

"(d) Except as otherwise specifically provided in this section, the provisions of this section shall be applicable to all aliens belonging to any of the classes enumerated in subsection (a) of this section, notwithstanding (1) that any such alien entered the United States prior to June 27, 1952. \* \* \*."

"The foregoing sections of the 1952 Act must be read together with the savings clause, which in pertinent part provides:

"Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect \* \* \* any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes (should probably read *statuses*), conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect." 8 U. S. C. A. Sec. 1101 note." (Emphasis supplied.)

The District Judge continues in his opinion to point out that these (above) sections do not specifically provide for the deportation of aliens who were excludable under the law in effect at the time of entry but who acquired a status of *non-deportability* thereafter under prior law.

The Judge in his opinion further says:

"\* \* \* If section 1251(a)(1) be given the effect claimed for it by the Government, then 'any alien' within the classes designated by that section would include—(a) excludable aliens who are eligible to apply for permanent residence under former Section 728(b) and who are still eligible to apply for such status under Section 1259 of the Act of 1952, and (b)

excludable aliens who have been granted discretionary relief in deportation proceedings under former Section 155 Title 8 U. S. C. A. The construction for which the Government contends would also produce an anomaly in the case of aliens who had been admitted to permanent residence in the United States under former Section 728(b). While such aliens would be deemed to have been lawfully admitted into this country as of the time of their entry, they would nevertheless be aliens who, within the terms of Section 1251(a)(1) were excludable at the time of entry by the law then in effect." (Emphasis supplied.)

We believe Congress could not have intended in the new law, the Nationality Act of 1952, to deport all aliens who illegally entered the United States and belonged to excludable classes during a period prior to July 1st, 1924. It seems more reasonable to believe that when Congress passed the old laws with the statute of limitations and provisions for registry and for suspension of deportation, pardons, and other relief measures, that Congress felt then that these aliens should be given the right to attain a nondeportable status, and these relief measures are still included in the new law.

As this Court knows, thousands of aliens within the classes designated by that Section 241 includes excludable aliens who entered as stowaways, or in other illegal manner, who would have been deported if they had not obtained discretionary relief under Section 728(b) of the law of 1940. Also aliens who were convicted of two felonies involving moral turpitude, who would have been deported if they had not obtained a pardon, conditional or full, or suspension of deportation. These aliens were all members of the excludable classes of aliens upon entry or became deportable after entry. Having obtained the various forms of relief provided for in the old law—Sec-

tion 155, Title 8—they of course were not deportable on the date of enactment of the new law of 1952.

Therefore, Congress to protect these thousands, in writing the new deportation law, especially Section 241(d), took steps to protect them by providing that only those aliens who on the date of enactment (still) belong or are belonging to those excludable classes of aliens enumerated in 241(a) (1) and (a) (4) shall be deported.

That, of course, means that all those aliens who may have at one time belonged to the excludable classes in 241, but who took steps either by pardons, obtaining suspension, discretionary relief or other means, or became non-deportable by reason of a statute of limitations did therefore, not belong and were not belonging to the excludable classes of aliens in 241, on the day when the new Act of 1952 was enacted or took effect.

Carson did not belong to the excludable class on the date of the enactment of the new law and that fact being a requisite for deportation under 241(d) he was not deportable under any law.

While Congress provided deportation of aliens for past offenses, no matter when committed, and provided deportation for illegal entry *no matter when same occurred*, it checkmated wholesale deportations of aliens by providing a condition of *present membership* of such aliens to the excludable classes enumerated in Section 241.

After all is said and done, would it not be most unreasonable to believe that Congress deliberately made *every* alien deportable whoever entered the United States illegally at any time before or after the enactment of the Act of 1952, regardless of the legal steps taken by the alien in accordance with the provisions of the old laws, passed by Congress, and despite this alien's attainment of a status of nondeportability under the law prior to the passage of the Act of 1952?

One wonders if Congress intended, in the Act of 1952, to deprive the aliens of all the benefits and the relief granted them under the *old laws*, and make them all deportable for illegal entries even prior to July 1st, 1924, when they were not deportable by operation of law.

If Congress really intended to do so, then why did they put into the new law the very same kind of provision for the relief of aliens who entered illegally or became deportable after entry such as Section 1254—suspension of deportation—voluntary departure with or without pre-examination; adjustment of status—Section 1255—also Sections 1257, 1258—change of status—Section 1259—registry for permanent residence of aliens who were members of the excludable class of aliens. All of these provisions are put in the new law to make these aliens non-deportable.

It is not reasonable to believe that the same Congress who deprived the aliens who applied for and attained a non-deportable status under the old laws and make them deportable would now put into the new law practically the very same provisions for their relief from deportation that it took away from them under the old law.

We believe Congress, in Section 241(d), took the steps necessary to protect all those aliens who:

- entered illegally or as stowaways prior to July 1, 1924 (Law of 1917, Statute of Limitations);
- entered legally but remained longer than permitted (By adjustment of status, 155, 8 U. S. C.);
- convicted for commission of two felonies involving moral turpitude (Conditional pardon, Law of 1917-1924);
- illegal entry as stowaway or crew member (Registry for permanent residence for lawful admission);
- all deportable aliens who received suspension of deportation;

all deportable aliens who presented conditional pardons;

all excludable aliens who were granted voluntary departure and returned on the visa of a citizen spouse.

Those aliens were no longer members of the excludable classes enumerated in subsection (a)(1) and (a)(4) and therefore, Congress took steps to protect them.

### CONCLUSION.

Sections 241(a)(1) and (4) provide for the deportation of aliens who entered the U. S. and belonged to one or more of the classes of aliens excludable by the law existing at the time of such entry and also makes deportable aliens convicted of two crimes. Carson comes under that heading but would be entitled to the protection of the Savings Clause 405(a) unless this Court has finally decided that 241(d) is a specific exception to the Savings Clause.

Therefore the Sections 241(a)(1) and (4) must be read in conjunction with 241(d) and this Court should construe literally the wording in 241(d) and there the Court will find that that section provides for the deportation of an alien who belonged to excludable classes on the date of entry or were deportable for crimes, *only* if this alien was "belonging" or "belongs" to the same excludable and deportable class on the date of the enactment of Section 241(d).

In view of the clear intent of Congress expressed by the use of the present tense of "belong" in Section 241(d) it is believed that this case affecting many thousands of families ought to be reconsidered for the views stated herein and a rehearing ought to be granted. Additional

support for our cause is found in *Fong Haw Tan v. Phelan*,  
333 U. S. 6-10.

The Respondent prays this Honorable Court grant a Rehearing in this case.

Respectfully submitted,

HENRY C. LAVINE,

Attorney for Respondent.

**CERTIFICATE.**

The undersigned counsel for Respondent certifies that this Petition for Rehearing is presented in good faith and not for purposes of delay.

HENRY C. LAVINE.